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SALT LAKE CITY, UTAH

PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

DENVER, COLORADO

LAS VEGAS, NEVADA

May 13, 2004

**VIA FACSIMILE AND MAIL**

Brent O. Hatch  
 HATCH, JAMES & DODGE, P.C.  
 10 West Broadway, Suite 400  
 Salt Lake City, Utah 84101

**VIA FACSIMILE AND MAIL**

Mark J. Heise  
 BOIES, SCHILLER & FLEXNER, LLP  
 One International Place  
 100 SE Second Street, Suite 2800  
 Miami, Florida 33131

**Re: SCO v. IBM**

Dear Brent and Mark:

I am enclosing a copy of IBM's combined deposition notice in the above-entitled matter.

Cravath, Swaine & Moore has been retained to represent Messrs. McDonough, Rodgers, and Otis Wilson at deposition and will arrange for their attendance. Mr. Frasure has retained counsel and IBM will procure his presence at deposition through his counsel. IBM also has issued, or will issue, subpoenas for the deposition of Mr. Anderer, as well as for the Rule 30(b)(6) deposition of BayStar Capital.

IBM also intends to issue subpoenas to Mr. Sean Wilson and Mr. Terpstra, who we understand are no longer employed by SCO. We understand that the remaining witnesses are currently employed by SCO, and expect that SCO will make them available for deposition. If our understanding is incorrect, please let us know as soon as possible.

Very truly yours,



Amy F. Sorenson

AFS:kb

Enclosure

cc: David Marriott  
 Chris Kao  
 Todd Shaughnessy

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Snell &amp; Wilmer is a member of LEKMAN, a leading association of independent law firms.

SNELL & WILMER LLP  
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CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler (admitted pro hac vice)  
David R. Marriott (7572)  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
Telephone: (212) 474-1000  
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff

DEFENDANT/COUNTERCLAIM-  
PLAINTIFF IBM'S  
NOTICE OF VIDEOTAPED  
DEPOSITIONS

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

PLEASE TAKE NOTICE that pursuant to Rules 26, 30, and 45 of the Federal Rules of Civil Procedure, counsel for defendant/counterclaim-plaintiff International Business Machines Corporation ("IBM") will take the following depositions upon oral examination at the dates and times specified:

[NYLT 2274034 v1.2914W05/13/04-11:02 a]

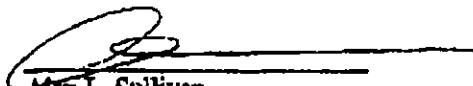
1. Philip Langer, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 1, 2004, beginning at 9:00 a.m.;
2. Sean Wilson, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 1, 2004, beginning at 9:00 a.m.;
3. Ryan Tibbitts, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 3, 2004, beginning at 9:00 a.m.;
4. Greg Pettit, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 3, 2004, beginning at 9:00 a.m.;
5. David Frasure, Wilson, North Carolina, location to be determined, June 8, 2004, beginning at 9:00 a.m.;
6. Rule 30(b)(6) deposition of BayStar Capital, Legalink San Francisco, 601 Van Ness Avenue, San Francisco, California, June 8, 2004, beginning at 9:00 a.m. (on the topics identified in the subpoena enclosed herewith);
7. David Rodgers, San Jose, California, location to be determined, June 10, 2004, beginning at 9:00 a.m.;
8. Otis Wilson, Greensboro, North Carolina, location to be determined, June 10, 2004, beginning at 9:00 a.m.;
9. Mike Anderer, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 15, 2004, beginning at 9:00 a.m.;
10. Richard McDonough, Savannah, Georgia, location to be determined, June 15, 2004, beginning at 9:00 a.m.;
11. Michael Davidson, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 17, 2004, beginning at 9:00 a.m.;
12. Ralph Yarro, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 17, 2004, beginning at 9:00 a.m.;

13. Jay Petersen, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 22, 2004, beginning at 9:00 a.m.;
14. Greg Anderson, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 22, 2004, beginning at 9:00 a.m.;
15. Jeff Hunsaker, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 24, 2004, beginning at 9:00 a.m.;
16. John Terpstra, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 29, 2004, beginning at 9:00 a.m.;
17. Reg Broughton, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, June 29, 2004, beginning at 9:00 a.m.;
18. Larry Gasparo, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, July 1, 2004, beginning at 9:00 a.m.;
19. Wolf Bauer, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, July 1, 2004, beginning at 9:00 a.m.;
20. Bob Bench, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, July 6, 2004, beginning at 9:00 a.m.;
21. Blake Stowell, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, July 8, 2004, beginning at 9:00 a.m.;
22. Chris Sontag, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, July 13, 2004, beginning at 9:00 a.m.;
23. Darl McBride, at Snell & Wilmer L.L.P., Gateway Tower West, 15 West South Temple, Suite 1200, Salt Lake City, Utah, July 15, 2004, beginning at 9:00 a.m.

The depositions will be taken pursuant to Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, will be recorded by stenographic and videotape means, and will continue from day to day until completed.

DATED this 13<sup>th</sup> day of May, 2004.

SNELL & WILMER L.L.P.



Alan L. Sullivan  
Todd M. Shaughnessy  
Amy F. Sorenson

CRAVATH, SWAIN & MOORE LLP  
Evan R. Chesler  
David R. Marriott

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation.*

Of counsel:

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Donald J. Rosenberg  
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1133 Westchester Avenue  
White Plains, New York 10604  
(914) 642-3000

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

**CERTIFICATE OF SERVICE**

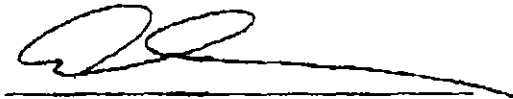
I hereby certify that on the 15<sup>th</sup> day of May, 2004, a true and correct copy of the foregoing was hand delivered to the following:

Brent O. Hatch  
Mark F. James  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack  
Mark J. Heise  
BOBS, SCHILLER & FLEXNER LLP  
100 Southeast Second Street, Suite 2800  
Miami, Florida 33131

Kevin P. McBride  
1299 Ocean Avenue, Suite 900  
Santa Monica, California 90401

A handwritten signature in black ink, appearing to be "JL", is written over a horizontal line.

258273.1

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[[NYLIT:2274034v13914W:05/15/04-11:42 a]]

AO 88 (Rev. 1/84) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

The SCO Group, Inc.

**SUBPOENA IN A CIVIL CASE**

V.

CASE NUMBER: 2:03CV-0294 District of Utah

International Business Machines Corporation

To: Baystar Capital, by and through the person(s) most familiar with  
the "Topics for 30(b)(6) Deposition" annexed hereto.  
80 E. Sir Francis Drake, Suite 2B  
Larkspur, CA 94939

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Legalink San Francisco  
801 Van Ness Avenue, Suite 2052  
San Francisco, CA 94102

DATE AND TIME  
June 8, 2004  
9:00 a.m.

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorney for International Business  
Machines Corporation

May 10, 2004

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

David Marriott, Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019  
(212) 474-1000

(See Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D on Reverse)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE	
DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE
DECLARATION OF SERVER	
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.	
Executed on	
DATE	SIGNATURE OF SERVER
ADDRESS OF SERVER	

Rule 48, Federal Rules of Civil Procedure, Parts C &amp; D

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(i) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or  
(iv) subject a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.